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UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, DONE AT VIENNA ON DECEMBER 20, 1988

JUNE 20, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 19, 1989.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on December 20, 1988. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Convention.

The production, trafficking, and consumption of illicit narcotics have become a worldwide menace of unprecedented proportions. Narcotics trafficking and abuse threaten the developing and industrialized nations alike, eroding fragile economies, endangering democratic institutions, and affecting the health and well-being of people everywhere. The profits made from the international drug trade are consolidated in the hands of powerful drug lords who operate with impunity outside the law. The widespread corruption, violence, and human destruction associated with the drug problem imperil all nations and can only be suppressed if all nations cooperate effectively in bringing to justice those who engage in illicit trafficking and abuse.

Patterned after many existing U.S. laws and procedures, the present Convention represents a significant step forward in international efforts to control the illicit traffic in narcotic drugs and psychotropic substances. The Convention obligates states party to the agreement to cooperate in suppressing illicit traffic and to take specific law enforcement measures and enact domestic laws, including those relating to money laundering, confiscation of assets, extradition, mutual legal assistance, and trade in chemicals, materials, and equipment used in the illegal manufacture of controlled substances. These and other provisions seek to establish a comprehensive set of laws and guidelines for a concerted and more effective effort on an international basis to combat illicit trafficking.

Having taken 4 years to complete, work on the Convention began in 1984 under United Nations auspices, and it was adopted at an international conference held in Vienna in November and December 1988. The United States and 43 other nations signed the Convention at that time, and 16 others have signed since then. The Vienna Convention is a tribute to the United Nations and represents the broadest and most far-reaching set of laws and agreements ever adopted in this field. It is strongly indicative of the political will of the states that adopted it and puts those who profit from this evil trade on notice that it will no longer be tolerated. It is clear the Convention has enthusiastic support in the internation-

al community, and it is expected that all states will unreservedly endorse this major step to unify and internationalize the fight against drugs and to generate universal action.

I recommend, therefore, that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 20, 1989.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on December 20, 1988. I recommend that the Convention be transmitted to the Senate for its advice and consent to ratification.

The Convention represents a significant development in the effort to combat illicit trafficking in drugs at the international level. Preparation of the Convention began some four years ago, under United Nations auspices, when the international community came to realize that stronger and broader measures for cooperative law enforcement were required to combat the growing menace of illicit trafficking. In 1984, the General Assembly of the United Nations unanimously adopted a resolution endorsing the negotiation of a new multilateral convention to complement the existing international drug control instruments (the 1961 Single Convention on Narcotic Drugs, amended by Protocol in 1972, and the 1971 Convention on Psychotropic Substances). Those two conventions regulate the legal production and distribution of controlled substances but do not provide an adequate legal basis for addressing and controlling the increased threat from illicit drug trafficking across international borders.

A draft convention was initially developed and considered by the UN Commission on Narcotic Drugs, and the resulting revision was reviewed in detail by an intergovernmental group of experts at several sessions during 1987 and early 1988. Based upon the recommendations of that group, the Economic and Social Council of the United Nations decided in May 1988 to convene an international conference of plentipotentiaries to complete the negotiations and to adopt the final version of the convention. That conference took place in Vienna from November 25 to December 20, 1988. The final text of the Convention was adopted by consensus by the 106 States represented at the conference, with 43 States (including the United States) signing the Convention when it was first opened for signature the following day.

The principal purpose of the Convention is to ensure that States adopt and implement effective law enforcement measures to combat illicit traffic in narcotic drugs and psychotropic substances at the national level. The Convention acknowledges that the "illicit traffic is an international criminal activity" and requires States to

establish specific drug-related offenses under their domestic laws, to provide appropriately severe sanctions, to cooperate in the extradition of accused offenders, and to provide each other mutual legal assistance in the investigation and prosecution of those offenses. States party are also obliged to cooperate in a wide range of anti-narcotics activities, including law enforcement and training, crop eradication and demand reduction programs, suppression of illicit trade in precursor chemicals, imposition of controls on use of the mails for trafficking purposes, and the seizure and confiscation of the proceeds from and instrumentalities used in illicit trafficking activities. In addition, States party are required to ensure that commercial carriers are not used for illicit traffic and to suppress illicit traffic in free trade zones and free ports. In many respects, the Convention thus adopts on a multilateral level the same sorts of legal undertakings and cooperative arrangements which the United States and other nations have already developed and implemented on a bilateral basis.

The major provisions of the Convention are as follows:

(1) *Offenses and Sanctions.*—The Convention requires each State party to establish as criminal offenses under its domestic law a comprehensive list of activities involved in or related to international drug trafficking. While such offenses already exist under U.S. law, their adoption by the international community and enactment into the laws of each State party will significantly strengthen the sanctions applicable to international drug trafficking around the globe.

Specifically, the covered offenses include: (i) the production, manufacture, distribution or sale of any narcotic drug or psychotropic substance contrary to the provisions of the 1961 Single Convention or the 1971 Psychotropic Substances Convention; (ii) the cultivation of opium poppy, coca bush or cannabis plant contrary to those earlier Conventions; (iii) the possession or purchase of any narcotic drug or psychotropic substance for the purpose of illicit trafficking; (iv) the intentional manufacture, transport or distribution of materials, equipment and substances for the purpose of illicit cultivation, production or manufacture of narcotic drugs and psychotropic substances; and (v) the organization, management or financing of any of the foregoing offenses. In addition, the Convention specifically requires criminalization of drug-related money laundering, including the conversion and transfer of property derived from an offense as well as the concealment and disguise of its true nature and source.

States party are also required, subject to their constitutional principles and basic concepts of their legal systems, to establish as criminal offenses: (i) the acquisition, possession or use of property knowingly derived from the above offenses; (ii) possession of equipment, materials and chemicals knowingly used in illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances; (iii) publicly inciting or inducing others to commit the above listed offenses; and (iv) related offenses of conspiracy, participation, aiding and abetting, etc.

Each State party is obliged to make these covered acts punishable by sanctions which take into account the grave nature of the offenses, such as imprisonment, fines and confiscation. The Conven-

tion requires competent authorities to take into account factual circumstances making the commission of the offenses particularly serious, such as the involvement of organized criminal groups, use of violence, victimization of minors, and the fact that offender holds public office.

Importantly, the Convention provides that the offenses shall not be considered "fiscal offenses", "political offenses" or "regarded as politically motivated" for purposes of its confiscation, extradition and mutual legal assistance articles.

(2) *Jurisdiction.*—States party are obliged to establish jurisdiction over the covered offenses when they are committed in its territory or on board its vessel or aircraft. A State party may establish jurisdiction over offenses committed by its nationals, on board vessels outside its territorial sea which it is properly boarding and searching, and with respect to conspiratorial actions committed outside its territory with a view to commission of a covered offense within its territory.

(3) *Confiscation.*—The Convention requires States party to enact far-reaching domestic laws providing for the "confiscation" (i.e., freezing, seizing and forfeiture) of all forms of property used in or derived from covered offenses, including the proceeds of the offense as well as the narcotic drugs and psychotropic substances, materials and equipment, and other instrumentalities. Parties are required to take the necessary measures to allow their appropriate authorities to identify, trace, seize and freeze property as preliminary steps toward the eventual confiscation of that property.

Importantly, the Convention requires States party to enable their courts or other competent authorities to order the production or seizure of bank, financial and commerical records necessary to trace, identify, seize and forfeit proceeds and instrumentalities of drug trafficking. In this connection, it specifies that Parties shall not decline to act on the grounds of bank secrecy.

In addition, States party are required, upon request, to assist each other by taking measures to identify, trace and freeze or seize proceeds, property, instrumentalities or any other things for the purpose of eventual confiscation either by the requesting Party or its own authorities. In this connection, the Convention establishes a procedure by which one Party may ask another to assist it by forfeiting proceeds or instrumentalities located in the requested Party's territory. Two alternatives are provided, depending on the law in the requested State: an action to enforce the judgment of forfeiture rendered in the requesting State, or initiation of new proceedings in the requested State on the basis of evidence provided by the requesting State. While acknowledging that the disposition of confiscated property and proceeds is a matter of domestic law, the Convention contemplates agreements between the Parties for either contributing the value of confiscated property to intergovernmental bodies specializing in the fight against illicit drug traffic, or sharing the proceeds and property with other Parties on a regular or case-by-case basis.

Where proceeds from illegal activity have been intermingled with property from legitimate sources, the Convention provides for confiscation up to the assessed value of the intermingled proceeds.

However, the Convention seeks to preserve the rights of *bona fide* third parties.

(4) *Extradition.*—The Convention amends existing extradition treaties between States party to include the covered offenses as extraditable offenses and provides that they shall be extraditable offenses between States which do not make extradition conditional on an extradition treaty. While acknowledging that extradition is subject to conditions provided by the law of the requested Party or applicable extradition treaties, the Convention calls upon States party to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of covered offenses. States party also undertake to conclude bilateral and multilateral agreements to enhance the effectiveness of extradition.

In considering extradition requests under the Convention, the requested State may refuse to comply where there are substantial grounds to believe that compliance would facilitate prosecution or punishment of a person on account of his race, religion, nationality or political opinions. However, extradition requests may not be refused under the Convention on the grounds that they involve fiscal or political offenses.

If a State in which an offender is found does not extradite that person because the offense was committed by one of its nationals or in its territory or on its vessel or aircraft, that State is obliged to submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party.

(5) *Mutual Legal Assistance.*—The Convention provides a treaty obligation to provide mutual legal assistance to other States party in investigations, prosecutions or other judicial proceedings in relation to covered offenses. Such assistance includes, *inter alia*, the taking of evidence, service of documents, executing searches and seizures, examining objects and sites, providing bank, financial and business records, and identifying and tracing proceeds and instrumentalities of crime. Other forms of mutual legal assistance may be provided as allowed by the domestic law of the requested Party.

Significantly, the Convention eliminates bank secrecy as a ground for refusing a request for mutual legal assistance.

To the extent necessary, the Convention amends existing mutual legal assistance treaties to apply to offenses covered by the Convention, thereby including money laundering in the context of illegal drug trafficking. As between States which are not parties to bilateral or multilateral treaties on mutual legal assistance, the Convention provides a basis for according such assistance, and specifies the procedures to be followed in making and executing requests. Requests may be refused only for limited specified reasons.

The Convention also provides for the possibility of transfer of criminal proceedings for covered offenses, where such transfer would be in the interests of a proper administration of justice.

(6) *Specific Enforcement Measures.*—The Convention requires States party to undertake other, less formal forms of assistance, cooperation and training to enhance the effectiveness of law enforcement action, such as establishing direct channels of communication between law enforcement authorities, assisting in particular inquiries concerning the identity and whereabouts of suspects, the movement of drugs, proceeds, instrumentalities and property, and moni-

toring the import and export of narcotic drugs and psyhcotropic substances.

Various provisions of the Convention contemplate adoption and use of certain law enforcement measures addressed specifically to illicit trafficking across national boundaries. For example, the Convention calls upon States party to take the necessary measures to allow for the use of controlled deliveries at the international level. In this context, "controlled delivery" describes the known passage of an illicit consignment through a territory in which the authorities elect not to immediately effect an arrest or seizure in order to trace the onward movement of the consignment and to identify higher levels of the trafficking organization. While use of controlled delivery is common in the United States, a number of countries indicated legal impediments to cooperating in such efforts absent a specific treaty obligation.

States party are required to take steps to ensure that means of transport operated by commercial carriers are not used in the commission of covered offenses. Each State party is to require that commercial carriers take precautions to prevent the use of their means of transport for illicit trafficking. In addition, the Convention calls upon States party to adopt measures to suppress the use of the mails for illicit traffic, including through the introduction of investigative and control techniques to detect illicit consignments. States party must also apply suppressive measures in their free trade zones and free ports that are no less stringent than those applied in other parts of their territory; such measures include monitoring the movement of goods and services, establishing systems to detect illicit consignments, and maintain surveillance systems in harbor and dock areas.

With respect to suppressing illicit traffic by sea, the Convention requires Parties to cooperate to the fullest extent possible, in conformity with the international law of the sea. It provides that a Party with reasonable grounds to suspect that a vessel displaying the flag or mark of registry of another Party is engaged in illicit traffic may request the flag State's authorization to take appropriate measures, including boarding and searching the vessel. The Convention provides that the flag State may subject its authorization to mutually agreed conditions, including conditions relating to responsibility.

(7) *Diversion of Chemicals.*—Reflecting international concern over the diversion of legally produced chemicals used in the basic manufacture or to facilitate the processing of illicit controlled substances, the Convention includes provisions for prevention of diversion at the national level and for cooperation among States party at the international level. It includes specific obligations with respect to monitoring suspicious shipments, providing for proper labelling and documentation of shipments, and maintenance of records. The Convention lists, in two Tables, chemicals covered by these provisions.

Separately, States party are required to take appropriate action to prevent trade in and diversion of common materials and equipment used in the illicit manufacture of narcotic drugs and psychotropic substances.

(8) *Eradication and Demand Reduction.*—The Convention obliges each Party to take appropriate measures to prevent the illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannibis plants cultivated illicitly in its territory. In this regard, Parties cannot take measures pursuant to this Convention which are less stringent than those stipulated by the 1961 Single Convention, as amended, and the 1971 Psychotropic Substances Convention. Parties are also obliged to take appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

The Convention calls upon States party to assist and support transit States and, in particular, developing countries in need of such assistance and support through programs of technical co-operation on interdiction and other related activities.

(9) *Supervising Mechanisms.*—The Convention assigns to the International Narcotics Control Board, which was established by the Single Convention, broad supervisory responsibilities in a manner consistent with the oversight role accorded it by the two existing international drug control treaties. Specifically, the Board has oversight with respect to the provisions concerning illicit manufacture of narcotic drugs and psychotropic substances, materials and equipment, commercial documentation and labelling of exports. The Board is required to prepare an annual report concerning the information at its disposal. In addition, the United Nations Commission on Narcotic Drugs is given certain supervisory responsibilities likewise consistent with the oversight role accorded the Commission by the two predecessor Conventions. In particular, the Commission is empowered to review the operation of the Convention, to make suggestions and general recommendations based on the information received from States party, and to take action on matters referred to it by the International Narcotics Control Board.

Article 32 of the Convention, concerning dispute settlement, permits States party to submit disputes to the International Court of Justice in the event that those disputes cannot be settled by other peaceful means of the Parties' choice, including negotiation, mediation, conciliation, and arbitration. It is my recommendation that, at the time of ratification, the United States exercise its right under paragraph 4 of that Article to declare, by means of reservation, that it does not consider itself bound to submit to the compulsory jurisdiction of the Court in respect of disputes arising under this Convention.

The Convention will enter into force ninety days after the date on which twenty States have indicated their intent to be bound by depositing instruments of ratification, acceptance, approval or accession.

Proposed legislation necessary to implement the Convention will be submitted to Congress in the near future.

Respectfully submitted,

R. BARTHOLOMEW.

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Adopted by the Conference at its 6th plenary meeting, on 19 December 1988

The Parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

Deeply concerned also by the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity,

Recognizing the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing also the illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,

Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,

Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic,

Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances,

Determined to improve international co-operation in the suppression of illicit traffic by sea,

Recognizing that eradication of illicit traffic is a collective responsibility of all States and that, to that end, co-ordinated action within the framework of international co-operation is necessary,

Acknowledging the competence of the United Nations in the field of control of narcotic drugs and psychotropic substances and desir-

ous that the international organs concerned with such control should be within the framework of that Organization,

Reaffirming the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody,

Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences,

Recognizing also the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic,

Desiring to conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problem as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances,

Hereby agree as follows:

ARTICLE 1—DEFINITIONS

Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout this Convention:

(a) "Board" means the International Narcotics Control Board established by the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(b) "Cannabis plant" means any plant of the genus Cannabis;

(c) "Coca bush" means the plant of any species of the genus Erythroxylon;

(d) "Commercial carrier" means any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;

(e) "Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;

(f) "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;

(g) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1 of the Convention;

(h) "1961 Convention" means the Single Convention on Narcotic Drugs, 1961;

(i) "1961 Convention as amended" means the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(j) "1971 Convention" means the Convention on Psychotropic Substances, 1971;

(k) "Council" means the Economic and Social Council of the United Nations;

(l) "Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;

(m) "Illicit traffic" means the offences set forth in article 3, paragraphs 1 and 2, of this Convention;

(n) "Narcotic drug" means any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(o) "Opium poppy" means the plant of the species *Papaver somniferum* L;

(p) "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 3, paragraph 1;

(q) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(r) "Psychotropic substance" means any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971;

(s) "Secretary-General" means the Secretary-General of the United Nations;

(t) "Table I" and "Table II" means the correspondingly numbered lists of substances annexed to this Convention, as amended from time to time in accordance with article 12;

(u) "Transit State" means a State through the territory of which illicit narcotic drugs, psychotropic substances and substances in Table I and Table II are being moved, which is neither the place of origin nor the place of ultimate destination thereof.

ARTICLE 2—SCOPE OF THE CONVENTION

1. The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign

equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

ARTICLE 3—OFFENCES AND SANCTIONS

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a)(i) The productions, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

(ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

(iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

(iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production, or manufacture of narcotic drugs or psychotropic substances;

(v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;

(b)(i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;

(c) Subject to its constitutional principles and the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;

(ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;

(iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

4. (a) Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other form of deprivation of liberty, pecuniary sanctions and confiscation.

(b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

(c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

(d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

5. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious, such as:

(a) The involvement in the offence of an organized criminal group to which the offender belongs;

(b) The involvement of the offender in other international organized criminal activities;

(c) The involvement of the offender in other illegal activities facilitated by commission of the offence;

(d) The use of violence or arms by the offender;

(e) The fact that the offender holds a public office and that the offence is connected with the office in question;

(f) The victimization or use of minors;

(g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;

(h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

6. The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

7. The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph 1 of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

8. Each Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph 1 of this article, and a longer period where the alleged offender has evaded the administration of justice.

9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph 1 of this article, who is found within it territory, its present at the necessary criminal proceedings.

10. For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.

11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

ARTICLE 4—JURISDICTION

1. Each Party:

(a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

(i) The offence is committed in its territory;

(ii) The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed;

(b) May take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

(i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;

(ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;

(iii) The offence is one of those established in accordance with article 3, paragraph 1, subparagraph (c)(iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1.

2. Each Party:

(a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

(i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed; or

(ii) That the offence has been committed by one of its nationals;

(b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

ARTICLE 5—CONFISCATION

1. Each Party shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;

(b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences established in accordance with article 3, paragraph 1.

2. Each Party shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article, for the purpose of eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

(i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

(b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the requested Party shall take measures to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party.

(c) The decisions or actions provided for in subparagraph (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.

(d) The provisions of article 7, paragraphs 6 to 19 are applicable *mutatis mutandis*. In addition to the information specified in article 7, paragraph 10, requests made pursuant to this article shall contain the following:

(i) In the case of a request pertaining to subparagraph (a)(i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

(ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.

(e) Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.

(f) If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.

(g) The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article.

5. (a) Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures.

(b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:

(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;

(ii) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(b) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

(c) Income or other benefits derived from:

(i) Proceeds;

(ii) Property into which proceeds have been transformed or converted; or

(iii) Property with which proceeds have been intermingled

shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed as prejudicing the rights of *bona fide* third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

ARTICLE 6—EXTRADITION

1. This article shall apply to the offences established by the Parties in accordance with article 3, paragraph 1.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. The Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. The Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall:

(a) If it does not extradite him in respect of an offence established in accordance with article 3, paragraph 1, on the grounds set forth in article 4, paragraph 2, subparagraph (a), submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party;

(b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 4, paragraph 2, subparagraph (b), submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in con-

formity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.

11. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

12. The Parties may consider entering into bilateral or multilateral agreements, whether *ad hoc* or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

ARTICLE 7—MUTUAL LEGAL ASSISTANCE

1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1.

2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures;

(d) Examining objects and sites;

(e) Providing information and evidentiary items;

(f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;

(g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

3. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

4. Upon request, the Parties shall facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.

5. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.

7. Paragraphs 8 to 19 of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 8 to 19 of this article in lieu thereof.

8. Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authori-

ties designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.

9. Requests shall be made in writing in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be notified to the Secretary-General. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

(c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned;

(f) The purpose for which the evidence, information or action is sought.

11. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

13. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

14. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

15. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested

with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

16. Reasons shall be given for any refusal of mutual legal assistance.

17. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

18. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

19. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

20. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

ARTICLE 8—TRANSFER OF PROCEEDINGS

The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice.

ARTICLE 9—OTHER FORMS OF CO-OPERATION AND TRAINING

1. The Parties shall co-operate closely with one another, consistent with their respective domestic legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established in accordance with article 3, paragraph 1. They shall, in particular,

on the basis of bilateral or multilateral agreements or arrangements:

(a) Establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 3, paragraph 1, including, if the Parties concerned deem it appropriate, links with other criminal activities;

(b) Co-operate with one another in conducting enquiries, with respect to offences established in accordance with article 3, paragraph 1, having an international character, concerning:

(i) The identity, whereabouts and activities of persons suspected of being involved in offences established in accordance with article 3, paragraph 1;

(ii) The movement of proceeds or property derived from the commission of such offences;

(iii) The movement of narcotic drugs, psychotropic substances, substances in Table I and Table II of this Convention and instrumentalities used or intended for use in the commission of such offences;

(c) In appropriate cases and if not contrary to domestic law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected;

(d) Provide, when appropriate, necessary quantities of substances for analytical or investigative purposes;

(e) Facilitate effective co-ordination between their competent agencies and services and promote the exchange of personnel and other experts, including the posting of liaison officers.

2. Each Party shall, to the extent necessary, initiate, develop or improve a specific training programmes for its law enforcement and other personnel, including customs, charged with the suppression of offences established in accordance with article 3, paragraph 1. Such programmes shall deal, in particular, with the following:

(a) Methods used in the detection and suppression of offences established in accordance with article 3, paragraph 1;

(b) Routes and techniques used by persons suspected of being involved in offences established in accordance with article 3, paragraph 1, particularly in transit States, and appropriate countermeasures;

(c) Monitoring of the import and export of narcotic drugs, psychotropic substances and substances in Table I and Table II;

(d) Detection and monitoring of the movement of proceeds and property derived from, and narcotic drugs, psychotropic substances and substances in Table I and Table II, and instrumentalities used or intended for use in, the commission of offences established in accordance with article 3, paragraph 1;

(e) Methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;

(f) Collection of evidence;
(g) Control techniques in free trade zones and free ports;
(h) Modern law enforcement techniques.

3. The Parties shall assist one another to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 2 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote co-operation and stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

ARTICLE 10—INTERNATIONAL CO-OPERATION AND ASSISTANCE FOR TRANSIT STATES

1. The Parties shall co-operate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programmes of technical co-operation on interdiction and other related activities.

2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

3. The Parties may conclude bilateral or multilateral agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article and may take into consideration financial arrangements in this regard.

ARTICLE 11—CONTROLLED DELIVERY

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.

ARTICLE 12—SUBSTANCES FREQUENTLY USED IN THE ILLICIT MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. The Parties shall take the measures they deem appropriate to prevent diversion of substances in Table I and Table II used for the purpose of illicit manufacture of narcotic drugs or psychotropic substances, and shall co-operate with one another to this end.

2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, together with all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:

(a) That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;

(b) That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action,

it shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by the Parties and the comments and recommendations of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a two-thirds majority of its members to place a substance in Table I or Table II.

6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States and other entities which are, or which are entitled to become, Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party one hundred and eighty days after the date of such communication.

7. (a) The decision of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within one hundred and eighty days after the date of notification of the decision. The request for review shall be sent to the Secretary-General, together with all relevant information upon which the request for review is based.

(b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit their comments within ninety days. All comments received shall be submitted to the Council for consideration.

(c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States and other entities which are, or which are entitled to become, Parties to this Convention, to the Commission and to the Board.

8. (a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Table I and Table II which are carried out within their territory.

(b) To this end, the Parties may:

(i) Control all persons and enterprises engaged in the manufacture and distribution of such substances;

(ii) Control under licence the establishment and premises in which such manufacture or distribution may take place;

(iii) Require that licensees obtain a permit for conducting the aforesaid operations;

(iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.

9. Each Party shall, with respect to substances in Table I and Table II, take the following measures:

(a) Establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close co-operation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions;

(b) Provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance;

(c) Notify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances, including in particular information about the means of payment and any other essential elements which led to that belief;

(d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names, as stated in Table I or Table II, of the substances being imported or exported, the quantity being imported or exported, and the name and address of the exporter, the importer and, when available, the consignee;

(e) Ensure that documents referred to in subparagraph (d) of this paragraph are maintained for a period of not less than two years and may be made available for inspection by the competent authorities.

10. (a) In addition to the provisions of paragaph 9, and upon request to the Secretary-General by the interested Party, each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

(i) Name and address of the exporter and importer and, when available, the consignee;

(ii) Name of the substance in Table I;

(iii) Quantity of the substance to be exported;

(iv) Expected point of entry and expected date of dispatch;

(v) Any other information which is mutually agreed upon by the Parties.

(b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

11. Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10 of this article, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process.

12. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

(a) The amounts seized of substances in Table I and Table II and, when known, their origin;

(b) Any substance not included in Table I or Table II which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

(c) Methods of diversion and illicit manufacture.

13. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Table I and Table II.

14. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in Table I or Table II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.

ARTICLE 13—MATERIALS AND EQUIPMENT

The Parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.

ARTICLE 14—MEASURES TO ERADICATE ILLICIT CULTIVATION OF NARCOTIC PLANTS AND TO ELIMINATE ILLICIT DEMAND FOR NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and

psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

2. Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

3. (a) The Parties may co-operate to increase the effectiveness of eradication efforts. Such co-operation may, *inter alia,* include support, when appropriate, for integrated rural development leading to economically viable alternatives to illicit cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. The Parties may agree on any other appropriate measures of co-operation.

(b) The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.

(c) Whenever they have common frontiers, the Parties shall seek to co-operate in eradication programmes in their respective areas along those frontiers.

4. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based, *inter alia,* on the recommendations of the United Nations, specialized agencies of the United Nations such as the World Health Organization, and other competent international organizations, and on the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking, held in 1987, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation. The Parties may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

5. The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Table I and Table II which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances.

ARTICLE 15—COMMERCIAL CARRIERS

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established in accordance with article 3, paragraph 1; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for the commission of offences established in accordance with article 3, paragraph 1. Such precautions may include:

(a) If the principal place of business of a commercial carrier is within the territory of the Party:

(i) Training of personnel to identify suspicious consignments or persons;

(ii) Promotion of integrity of personnel;

(b) If a commercial carrier is operating within the territory of the Party:

(i) Submission of cargo manifests in advance, whenever possible;

(ii) Use of tamper-resistent, individually verifiable seals on containers;

(iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious circumstances that may be related to the commission of offences established in accordance with article 3, paragraph 1.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas co-operate, with a view to preventing unauthorized access to means of transport and cargo and to implementing approrpriate security measures.

ARTICLE 16—COMMERCIAL DOCUMENTS AND LABELLING OF EXPORTS

1. Each Party shall require that lawful exports of narcotic drugs and psychotropic substances be properly documented. In addition to the requirements for documentation under article 31 of the 1961 Convention, article 31 of the 1961 Convention as amended and article 12 of the 1971 Convention, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as set out in the respective Schedules of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the quantity being exported, and the name and address of the exporter, the importer and, when available, the consignee.

2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported be not mislabelled.

ARTICLE 17—ILLICIT TRAFFIC BY SEA

1. The Parties shall co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.

2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another

Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, *inter alia*:

(a) Board the vessel;

(b) Search the vessel;

(c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.

6. The flag State may, consistent with its obligations in paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.

7. For the purposes of paragraphs 3 and 4 of this article, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to do so, and to requests for authorization made pursuant to paragraph 3. At the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.

8. A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.

9. The Parties shall consider entering into bilateral or regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

10. Action pursuant to paragraph 4 of this article shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

11. Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.

ARTICLE 18—FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress illicit traffic in narcotic drugs, psychotropic substances and substances in Table I and Table II in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

(a) To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower the competent authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to search crew members, passengers and their baggage;

(b) To establish and maintain a system to detect consignments suspected of containing narcotic drugs, psychotropic substances and substances in Table I and Table II passing into or out of free trade zones and free ports;

(c) To establish and maintain surveillance systems in harbour and dock areas and at airports and border control points in free trade zones and free ports.

ARTICLE 19—THE USE OF THE MAILS

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles of their domestic legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

2. The measures referred to in paragraph 1 of this article shall include, in particular:

(a) Co-ordinated action for the prevention and repression of the use of the mails for illicit traffic;

(b) Introduction and maintenance by authorized law enforcement personnel of investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Table I and Table II in the mails;

(c) Legislative measures to enable the use of appropriate means to secure evidence required for judicial proceedings.

ARTICLE 20—INFORMATION TO BE FURNISHED BY THE PARTIES

1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of this Convention in their territories and, in particular:

(a) The text of laws and regulations promulgated in order to give effect to the Convention;

(b) Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by persons so engaged.

2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.

ARTICLE 21—FUNCTIONS OF THE COMMISSION

The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular:

(a) The Commission shall, on the basis of the information submitted by the Parties in accordance with article 20, review the operation of this Convention;

(b) The Commission may make suggestions and general recommendations based on the examination of the information received from the Parties;

(c) The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board;

(d) The Commission shall, on any matter referred to it by the Board under article 22, paragraph 1(b), take such action as it deems appropriate;

(e) The Commission may, in conformity with the procedures laid down in article 12, amend Table I and Table II;

(f) The Commission may draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

ARTICLE 22—FUNCTIONS OF THE BOARD

1. Without prejudice to the functions of the Commission under article 21, and without prejudice to the functions of the Board and the Commission under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention:

(a) If, on the basis of its examination of information available to it, to the Secretary-General or to the Commission, or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to furnish any relevant information;

(b) With respect to articles 12, 13 and 15:

(i) After taking action under subparagraph (a) of this article, the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 12, 13 and 16;

(ii) Prior to taking action under (iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;

(iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

2. Any Party shall be invited to be represented at a meeting of the Board at which a question of direct interest to it is to be considered under this article.

3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

5. In carrying out its functions pursuant to subparagraph 1(a) of this article, the Board shall ensure the confidentiality of all information which may come into its possession.

6. The Board's responsibility under this article shall not apply to the implementation of treaties or agreements entered into between Parties in accordance with the provisions of this Convention.

7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 32.

ARTICLE 23—REPORTS OF THE BOARD

1. The Board shall prepare an annual report on its work containing an analysis of the information at its disposal and, in appropriate cases, an account of the explanations, if any, given by or required of Parties, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

ARTICLE 24—APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic.

ARTICLE 25—NON-DEROGATION FROM EARLIER TREATY RIGHTS AND OBLIGATIONS

The provisions of this Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

ARTICLE 26—SIGNATURE

This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

(a) All States;

(b) Namibia, represented by the United Nations Council for Namibia;

(c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence.

ARTICLE 27—RATIFICATION, ACCEPTANCE, APPROVAL OR ACT OF FORMAL CONFIRMATION

1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 26, subparagraph (c). The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the Secretary-General.

2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

ARTICLE 28—ACCESSION

1. This Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional economic integration organizations referred to in article 26, subparagraph (c). Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

ARTICLE 29—ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.

2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to this Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. For each regional economic integration organization referred to in article 26, subparagraph (c) depositing an instrument relating to an act of formal confirmation or an instrument of accession, this Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

ARTICLE 30—DENUNCIATION

1. A Party may denounce this Convention at any time by a written notification addressed to the Secretary-General.

2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

ARTICLE 31—AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to the Secretary-General, who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed to have been accepted and shall enter into force in respect of a Party ninety days after that Party has deposited with the Secretary-General an instrument expressing its consent to be bound by that amendment.

2. If a proposed amendment has been rejected by any Party, the Secretary-General shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with Article 62, paragraph 4, of the Charter of the United Nations. Any amendment resulting from such a conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretary-General.

ARTICLE 32—SETTLEMENT OF DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

3. If a regional economic integration organization referred to in article 26, subparagraph (c) is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of a signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any Party having made such a declaration.

5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

ARTICLE 33—AUTHENTIC TEXTS

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

ARTICLE 34—DEPOSITARY

The Secretary-General shall be the depositary of this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE AT VIENNA, in one original, this twentieth day of December, one thousand nine hundred and eighty-eight.

ANNEX

Table I

Ephedrine
Ergometrine
Ergotamine
Lysergic acid
1-phenyl-2-propanone
Pseudoephedrine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

Table II

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Phenylacetic acid
Piperidine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

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